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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,085	04/30/2001	Isabelle Bara	05725,0852	2724

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Finnegan Henderson Farabow
Garrett & Dunner
1300 I Street NW
Washington, DC 20005

EXAMINER

METZMAIER, DANIEL S

ART UNIT PAPER NUMBER

1712

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,085

Applicant(s)

BARA, ISABELLE

Examiner

Daniel S. Metzmaier

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claims 27-83 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 3, 2003 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 57, line 2, should read "titanium dioxides;"

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 27-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/17055 to L'Oreal, as evidenced by patent family member document Roulier et al

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US 6,045,814 (hereafter Roulier et al '814) taken with Intercos Italia S.p.A., EP 803 245 (hereafter Intercos '245). Roulier et al '814 and WO 97/17055 are characterized for their teachings in the above rejection combination. Said characterizations are herein incorporated by reference.

Roulier et al '814 differs in the concentration of said gelling agents in the solid gels and the combination of gelling agents taught in the prior art for said same purpose as gelling agents.

Intercos '245 (abstract; column 1, lines 21 et seq; and examples and claims) discloses a compact solid gel comprising a water, polysaccharides, humectants and a powder phase. Intercos '245 (column 1, lines 34-44) discloses the hydrophilic gelling overlapping those disclosed in Roulier et al '814 employed either singly or in combination including carageenan, agar, gellan, alginic acids and salts at (column 1, lines 27 and 28) a concentration of 0.3 to 4% by weight of the gels. Said concentrations read on the claimed concentration.

Intercos '245 (column 1, lines 45 et seq) teaches the compositions are advantageously thermoreversible and may further incorporate electrolyte salts, soaps, various excipients employed in cosmetics including various fillers and pigments.

These references are combinable because they teach cosmetic gels. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ gellan gum as an obvious exudates contemplated in the Roulier et al '814 compositions at concentrations of less than 20 % by weight to form the thermoreversible gels taught in the Intercos '245 reference.

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Intercos '245 differs in the further incorporation of at least one cellulose derivative. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ a cellulose derivative as an obvious gelling agent to form the gels taught in the Intercos '245 reference as a exudates taught in Roulier '814 (column 3, lines 23-29) for the xanthan gum employed in Intercos '245 (column 4).

It is generally prima facie obvious to use in combination two or more ingredients that have previously been used separately for the same purpose in order to form a third composition useful for that same purpose. In re Kerkhoven, 626 F.2d 846, 205 USPQ 1069 (CCPA 1980); In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); In re Crockett, 279 F.2d 274, 126 USPQ 186 (CCPA 1960). As stated in Kerkhoven and Crockett, the idea of combining them flows logically from their having been individually taught in the prior art. In the instant case, both the cellulose derivatives and the gellan gums are taught as gelling agents in the Roulier et al '814 reference.

Response to Arguments

6. Applicant's arguments filed November 3, 2003 have been fully considered but they are not persuasive.

7. Applicants (pages 14 and 15 of the above noted response) assert the Roulier reference forms the gels by extrusion, teaches it was not possible to manufacture the gels by casting and the EP '245 discloses casting methods. Applicants conclude the gelling agents are not combinable since the gel making techniques are not compatible. This has not been deemed persuasive for the following reasons. The instant claims are

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silent regarding the gel-making technique and the specification is unconcerned with the method of making the gels. The only recitation therein is in example 1, which employs casting.

The combination logically flows from the prior art that if casting techniques are desired as suggested in the Roulier '814 reference, the skilled artisan at the time of applicants' invention would logically look to the EP '245 reference teaching said technique and employ at least some of the gelling agents taught therein for casting.

Also, the gelling agents are cited for their gelling properties in the gelling compositions claimed. The combination logically flows from their being taught for their gelling function. There are several methods of gel-making and it is within the level of ordinary skill in art to form said gels.

8. Applicants assert the gelling agents may not be relied on as functional equivalents because the examiner has pointed to no teachings wherein gellan is a functional equivalent to other gelling agents or its use in extrusion methods. This has not been deemed persuasive since the gellan is taught singly or in combination with carrageenin, agar and alginic materials. Roulier '814 specifically teaches these materials (column 3, lines 17-19).

Also, EP '245 further teaches the use of gellan at lower concentrations to form a solid product for the advantage of forming the gels by the noted casting method.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Samain et al, US 6,342,235, corresponds to WO 97/17053.

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Samain et al and WO 97/17053 are directed to solid cosmetic compositions employing gelling agents including cellulose derivatives at concentrations including the range of higher than 8% to 20% by weight.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.


Daniel S. Metzmaier
Primary Examiner
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DSM